

Brussels, 18 June 2009

COMMISSION RECAST PROPOSAL FOR DIRECTIVE 2002/96/EC (WEEE) COM (2008)810/4

EXECUTIVE SUMMARY

Orgalime kindly requests the support of European regulators for the following comments and way forward on the Commission's proposal of 3.12.2008 for amending Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE):

- **Producers of electrical and electronic equipment are committed to the objectives of the WEEE Directive:** Producers have taken their responsibility seriously and have driven an effective and efficient implementation of the existing directive in the member states, which we will continue to do. Producers are fully committed to treat 100% of the WEEE that is handed over to them in compliance with the respective provisions of the WEEE Directive.
- **Orgalime acknowledges the Commission's identified outstanding issues with regards to the management of WEEE,** and in particular:
 - To avoid improper treatment of WEEE inside the EU and illegal WEEE shipments outside the EU
 - To reduce administrative burden and costs without lowering environmental protection
 - To better harmonise and clarify the directive, i.e. in the areas of registration, reporting and scope
 - To bring all WEEE collected and treated into the official WEEE reporting scheme
 - To ensure an efficient raw material and resource management
- However, **the recast proposal is based on the fundamental misconception that the management of WEEE is controlled by a single stakeholder that is the producer of EEE, who could guarantee compliance of consumers, retailers, distributors, traders, municipalities, recyclers, scrap dealers, traders and any other actor involved in WEEE management. This is of course impossible.**
- **Legislation can only be effective if its provisions are clear cut and enforceable, and if it addresses the right tools and targets** throughout the process of adopting legislation at European level, when transposing it into national law and when enforcing it at a national level. This has not been achieved in the recast proposal.
- **Therefore, industry disagrees that the proposed "solutions", as outlined in the Commission proposal, could solve the agreed problems with WEEE. In particular:**

Orgalime, the European Engineering Industries Association, speaks for 35 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 11.1 million people in the EU and in 2008 accounted for some €1,885 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

- The **proposal to encourage producers to finance all costs occurring for WEEE collection facilities** is neither practically nor legally appropriate as a way to combat improper treatment in the EU or illegal shipment of WEEE outside the EU (so called “leakage”). Producers cannot accept a proposal that provides a blank cheque for invoicing of costs occurring for collection facilities without
 - a. the explicit right for producers to also physically organise collection, and
 - b. the obligation on all other actors to indeed return and report on WEEE through the official WEEE channel.
- The proposal that producers should be responsible in the future for meeting a **new collection rate** based on sales volumes is completely unrealistic and in no way furthers the environmental objectives of the WEEE Directive.
- We welcome the proposal for **better registration by harmonised data and reporting procedures**, though, this proposal can only be effective if the scope of WEEE is fully harmonised in the EU. This, however, is not the case in the present proposal. A shift of the WEEE annexes to RoHS Directive cannot resolve this situation.

In conclusion, Orgalime regrets that the Commission has not seen fit to come forward with a proposal that recognises the enormous efforts made by the industry to set up an effective WEEE management scheme in record time and that mirrors the reality of WEEE management.

Orgalime **herewith provides its detailed comments and proposals** to solve the above mentioned problem areas that can help improving environment protection while at the same time avoid an unnecessary fundamental change of official WEEE management structures existing and performing successfully today, which would only cause unnecessary additional administrative burden and multiplied costs for same services that in the end the European consumer has to bear.

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I. INTRODUCTION

There are a number of fundamental aspects and facts that we want to highlight before commenting on the individual elements of the Commission proposal:

1. Producers are committed to the objectives of the WEEE Directive

Producers have taken their responsibility seriously.

Producers have driven an effective and efficient implementation of the existing directive in the member states.

Producers are fully committed to treat 100% of the WEEE that is handed over to them in compliance with the respective provisions of the WEEE Directive.

2. Orgalime regrets that the Commission's internal preparatory process of the WEEE recast proposal has not been sufficiently transparent

Notwithstanding certain stakeholder consultations before summer 2008, the Commission did not discuss key options chosen for the final proposal with stakeholders beforehand. It also does not support its final proposal with sound data, an implementation report or its own preparatory studies that would justify the need for fundamental changes in the directive, i.e.: in the areas of financing and collection.

3. The recast proposal in its entirety fails to recognise the fact that WEEE management is a multiple stakeholder process in practice

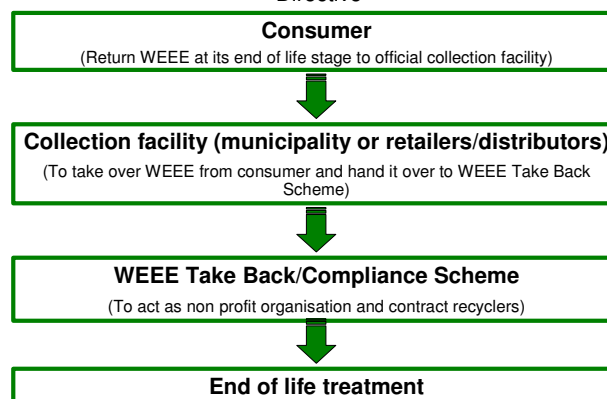
Successful WEEE management depends on a fair cooperation between all actors involved, and the readiness of each actor to exercise his role and powers in a responsible manner in accordance with the directive.

Actors involved to name but a few include: consumers, retailers, distributors, any other collector of WEEE, traders, recyclers, WEEE take back schemes, WEEE registers, and of course producers.

4. Actors and flows of WEEE

The current WEEE Directive is based on the following **scenario of WEEE management as being within ("INSIDE") the responsibility of producers:**

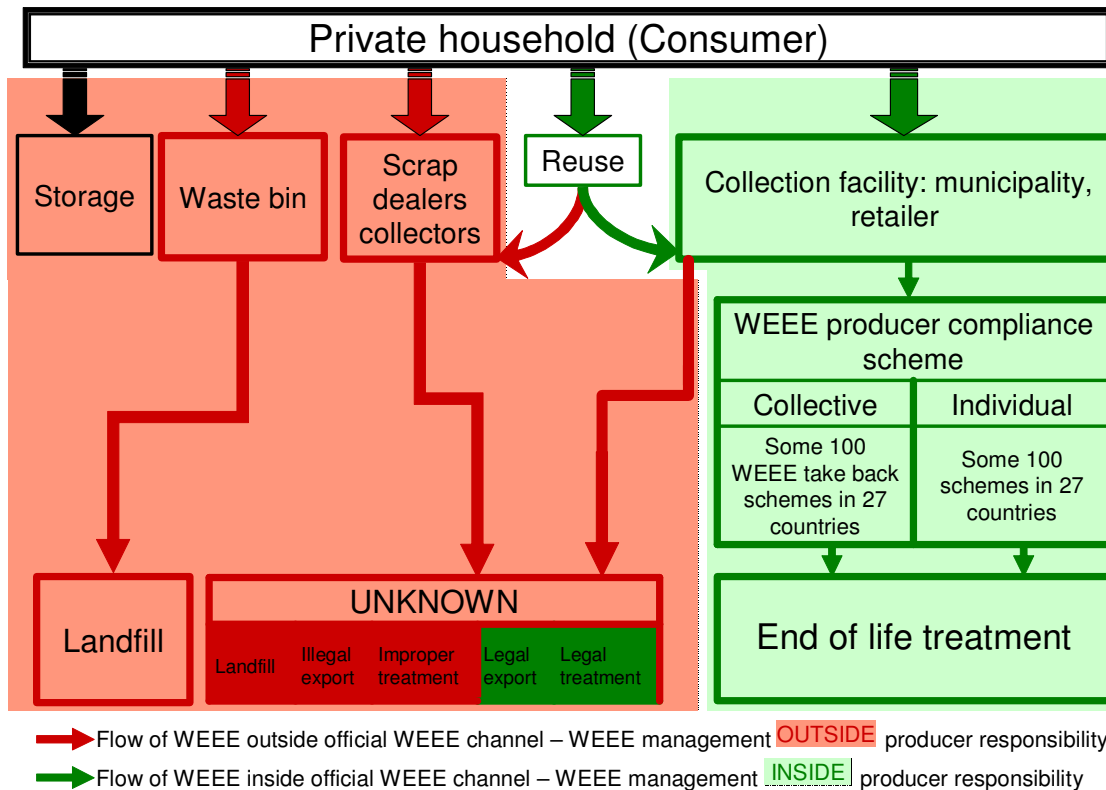
Overview on management of WEEE according to the WEEE Directive



The European Engineering Industries Association

However, **in reality**, actors and flows of used appliances and **WEEE from private households** are multiple and in many ways **outside** the producer's sphere of influence, his control and his responsibility:

Overview on actors and flows of WEEE from private households (B2C) in practice



Note: The actors and flows of WEEE from users other than private households (B2B) are mostly identical with those in the diagram above with the exception, that municipalities are not playing any significant role.

Collection of WEEE from private households is happening through many different collection routes, with considerable amounts **escaping from official reporting** with consequent problems of unsatisfactory treatment and other possible negative consequences. Collection of WEEE is done by a multitude of “service providers”, i.e.: apart from municipalities also by retailers, collectors, recycling operators, private people (bringing it themselves to collection sites), e-bay sellers and others.

For the recast of the Directive, we ask regulators to bear in mind that producers, given that they operate in democratic states, who do not possess stronger powers than

- local authorities (preventing scrap merchants doing their business),
- customs and excise authorities (acting against illegal export of waste), or
- the consumer's free will (on what to do with used or waste appliances).

Also, we would like to stress that recyclers or WEEE take back/compliance schemes can NOT speak for EEE producers. Notwithstanding the fact that WEEE compliance schemes are acting on behalf of obliged producers and in principle not for profit, they are competing companies with their own agendas.

This is because WEEE-take-back schemes, from which manufacturers buy services, are economic operators with their own commercial activities, their own trading sphere.

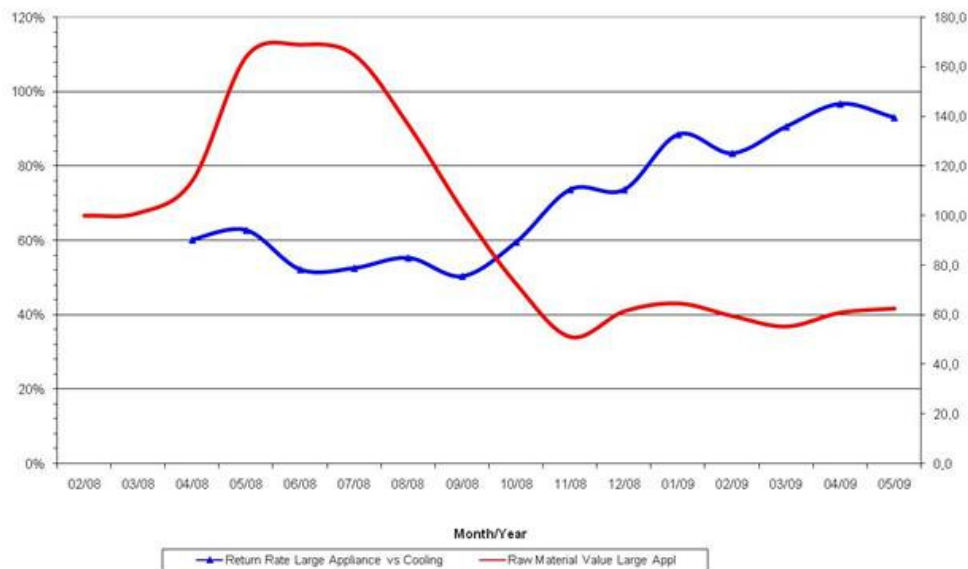
Today, there are different kinds of take-back-schemes: individual take-back schemes, collective take-back schemes, some of which are grouped at European Level in the "WEEE Forum", the association of national take back schemes in Europe, or competing consortia that are not members of the WEEE Forum. For arriving at a balanced and fair proposal, we expect regulators to properly consult producers of electrical and electronic equipment.

5. WEEE and its variable value – impact on producer responsibility and product design

At the time of adoption of the WEEE Directive in 2003, the overriding perspective on the issue of WEEE was on how to get rid of this waste stream in an environmentally sound and cost effective manner.

Today, a new dimension has entered the debate, driven by rocketing raw material prices in the years 2007 and 2008: under these circumstances WEEE with a high metal content has a net value and therefore, there existed a market for such WEEE.

For example, the below graph shows the correlation between the level of raw material prices and the return of large domestic appliances in Italy, where WEEE is collected by 90% throughout municipalities: the higher the raw material price, the less large domestic appliances are returned. As soon as prices drop, the return rate increases.



It is primarily such WEEE with a value that disappears from the official WEEE channel in times of high material prices through unreported collection routes and that is often not treated in an environmentally sound manner. It is on the other hand mainly WEEE with low or no economic value that remains in producer led compliance schemes: this can hardly be considered as satisfactory.

To our regret, the recast proposal, contrary to the Commission's claims, has failed to address this issue in a satisfying manner and particularly failed to improve producers' physical access to WEEE, since **there is no correlation between obligations on producers for financing of collection facilities and the return of WEEE to producer compliance schemes** (see introductory slide).

However, as long as commercial interests are involved, and this can be expected to continue, it is unrealistic to believe that the proposed changes in the area of collection would effectively lead to an improved situation.

If there are market driven schemes that deliver the objectives of the Directive, we agree that these should be able to continue, but one needs to be sure that these equally have to respect the rules given by the Directive. The recast WEEE Directive should reflect this reality.

Orgalime agrees that the design of products is important for supporting the objective of improving of the environmental performance of products throughout their life cycle, including the waste phase. Producer responsibility has always aimed at triggering manufacturers to develop recycling friendly products.

However, at least when WEEE has a positive value, manufacturers can no longer benefit from their previous investments in the design for recyclability, because other stakeholders than official producer compliance schemes will try to get hold of such WEEE. Therefore, it means the more a producer invests in design for recycling of WEEE with a net value, the less he will be rewarded in economic terms.

Bearing these facts in mind, Orgalime fully agrees that the main problem, as identified by the European Commission, is the lack of control of the waste flow.

However, the Commission's proposed "solutions" to the problem, and especially the proposed extended producer financing obligations in the area of collection and its combination with a proposal for a new collection rate, can in fact not be fulfilled by our industry.

As there are many stakeholders involved on recycling and collection, setting obligations for one actor only, as it is the case in the WEEE recast proposal, does not solve the problem, but only generates more problems!



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II. FINANCING THROUGHOUT THE WHOLE WASTE CHAIN (article 12, recital 19)

Today, producers' obligation to finance collection starts at an agreed collection point (for example at the municipality's or retailer's site).

In article 12 of the WEEE recast proposal the Commission proposes that member states shall encourage producers to finance "all the costs occurring for collection facilities for WEEE from private households".

Recital 19 of the proposal further specifies that member states should encourage producers "to take full ownership of WEEE collection in particular by financing the collection of WEEE throughout the whole waste chain".

Industry is strongly opposed to any suggestion that producers should finance, or part-finance, collection of waste from the doorstep of private households. The reasons for this are multiple, including the following:

1. There is no environmental benefit in producer responsibility starting at the door of private households

- In its original proposal and Explanatory Memorandum to the WEEE Directive, the Commission itself confirmed that producer responsibility for collection should start with the collection of WEEE from the collection facility established under Article 4 (i.e.: at collection points of municipalities or retailers), "*because there is no environmental benefit to be gained by requiring producers to finance or part-finance the collection of WEEE from private households*". This fact has not changed since.
- The overall objective of promoting design of recyclable products cannot justify the proposal to finance costs from private households to collection facilities either, since there is no correlation between those two issues.
- If producers (for reasons of cost effectiveness) choose to set up their own collection structure where possible, this will inevitably duplicate municipal collection structures; this can indeed then lead to many parallel collection structures run by the different producer organisations and even individual producers. An increase in the number of collection facilities would be confusing for consumers, who cannot easily know to which site they should return recyclable items. Multiple collection structures cannot be seen as environmentally beneficial either. This may also lead to severe difficulties in enforcing and monitoring performance between producer responsibility organisations and individual producers and thereby undermine the environmental objectives of the directive.

2. The proposal cannot avoid "leakage" and does not give producers access to WEEE

- "Leakage" in the Commission's understanding means WEEE that is not reported in the official WEEE channel today. Such leaked WEEE goes either to bad treatment, or to no treatment/landfill, or to illegal export, or to good treatment or to legal export (see introductory chart). While precise figures on the destination of such leaked WEEE are not available today (see Environmental Agency Report of March 2009), some example recently occurred in a study of the German Technical University Dresden, which concludes that up to 122.000t of WEEE are moving from Germany to Easter Europe annually, while some 350.000t of WEEE would remain in the drawers of private households, being noted that the WEEE stream accounts for 1% of the total municipal waste.

- The main reason why the proposal cannot work in practice is the number of different stakeholders acting in the collection field and the fact that producers do not have any legal control power over these other actors. For example:
 - It is the *consumer* who is free to choose to return used appliances and WEEE or to keep it in his household for any other purpose. He may even decide to dispose of WEEE in his waste bin. Consumers are also free to choose the actor to whom they return any of their used appliances and WEEE (be it municipality, retailer or other).
 - *Today retailers, distributors, municipalities, scrap dealers and traders also collect WEEE*, but they are free to choose to whom to hand over/sell second hand appliances and WEEE. Moreover, they bear no reporting nor other obligations for the WEEE collected by them.
 - To date, *authorities with all their enforcement power* have not succeeded in making other actors than manufacturers return and report on WEEE they possess within the official WEEE channels or to control effectively European export harbours.

Therefore, the proposed change to financing will not give producers better access to WEEE than is the case today.

3. There is no need to further harmonise producer financing for the purpose of a level playing field

Orgalime supports that pre-financing of WEEE is a basic requirement for sound financing of WEEE, especially for products with a zero or negative value at end-of-life.

While certain member states' transpositions could be improved, the current Directive already provides for the necessary level of harmonisation of financing obligations. All manufacturers do have to apply the same rules, and we have no evidence of any competition problem.

In addition, it would be against the subsidiarity principle of the EC Treaty to harmonise aspects at European level that can be better addressed at national level. The further details of financing are such aspects that can be better addressed at national level.

4. Giving a quasi blank cheque to municipalities to shift costs from general taxpayers to consumers of EEE (polluter pays) will make total costs for WEEE management rise considerably

- WEEE only represents a fraction of the total waste stream. It is neither possible nor appropriate, that producers of WEEE should potentially subsidise the general financing of all municipal waste, nor can EEE producers be instrumental for the change of general consumer behaviour on how to deal with his municipal waste in general.
- At present, the most important collection route through municipal collection sites offers a generally well established, environmentally sound basic structure for collection. Under the proposed scenario, however, producers will have to either buy services from these existing sites/centres, or have to set up a duplicating collection structure.
- Especially, continuing collection through municipal collection facilities will cause extensive problems related to the pricing of the compensation for the use of the sites/centres. In municipalities, waste collection operations cover all types of waste, including WEEE which represents a small fraction of the total.
- If only producers of EEE were obliged to finance municipal collection points and not those responsible for any other types of waste, municipalities could be tempted to put a disproportionate share of waste collection costs onto producers of EEE so as to reduce

their own contribution to the financing of waste collection. In our view, the proposal can therefore be seen as a general incentive for raising prices for collection.

- Consumers already pay municipalities for their household waste collection through local taxes, which are unlikely to go down even if extended financing obligations on producers for WEEE would apply.

Therefore, the proposal for extended producer financing obligations for collection will just increase the risk for producers that other actors will try to further force on their collection costs to producers, while producers have no influence or control on such other actors and their collection processes and related costs.

It is also essential to note that the **possibility to apply a visible fee** can by no means constitute a compensation for additional costs, such as the costs for collection from the door of private households: the option of applying a visible fee is included in article 14.1. of the recast proposal, which we support. Manufacturers must be allowed to apply visible fees on new products to finance the management of dealing with waste. The directive must specify that Member States shall allow producers to show the cost for the waste management in addition to the product price at the point of sale.

However, the possibility to apply a visible fee will not mean that manufacturers will have no difficulties in transferring the cost of handling of WEEE to consumers. This is because there is strong competition between manufacturers and there is constant pressure on the prices of products, as well as on the fees that retailers and consumers are willing to pay.

An effective option to display a visible fee is therefore limited to those cases, where the fee itself is:

- set by a non competing nationwide compliance scheme, and
- unified for a specific type of B2C equipment, and
- paid by the final private consumer to the producer, who then forwards it to the compliance scheme.

In conclusion, Orgalime underlines that in practice extending financing obligations of collection of WEEE from private households represents a disguised waste tax and bears major risks, including:

- The instability that it would cause to existing schemes without environmental benefit
- The practical impacts on producers with considerable cost increases and unfair competition
- The punishment of proactive producers that have set up a functioning WEEE management scheme in record time by overlooking that producers do not have legal enforcement or control powers on any other stakeholder
- The increase of confusion for the end user on proper disposal of their WEEE due to the potential multiplication of collection facilities organised by producers for the sake of cost effectiveness
- The negative impact on the environment due to a lower optimisation of logistics resulting from multiplied collection facilities.

Orgalime proposal:

- Remove the sentence “*Member States, where appropriate, shall encourage producers to finance all the costs occurring for collection facilities for WEEE from private households.*” from article 12 of the recast proposal
- Re-introduce the wording of recital 20 of the existing Directive in recital 19 of the recast proposal

III. COLLECTION RATE (article 7)

The Commission proposes to replace the existing collection target of 4 kg of WEEE per member state and inhabitant by a new collection rate of 65% based on sales volumes to be met by producers as of 2016 (article 7).

The proposed approach of a collection rate **based on sales volumes** to be met by producers is not supported by our industry for several reasons:

- Again, producers do not have legal enforcement or control powers to oblige private and professional users of EEE to return their used and end of life appliances to them. An obligation on producers is consequently inappropriate as means to achieve a certain rate of collection. This proposal in our view infringes the principle of proportionality established in article 5.3 of the EC Treaty (“*ultra posse nemo obligatum*”), since nobody can be obliged to reach the impossible.
- It is all the more impossible for producers to implement such an obligation considering that the proposal does not foresee any rules for actors other than producers (especially retailers, collectors and scrap dealers) to report on their WEEE related activities or to ensure that the WEEE they possess enters into the official WEEE channels.
- In practise, a higher rate of WEEE is collected than producers can report today since collection of WEEE with valuable content is collected through such unofficial routes by stakeholders other than producers. At the moment, these routes are not controlled. If all routes were controlled, this would also improve environment protection during treatment operations. It is also important to note that the leakage of the WEEE is not intended by producers.
- In addition, there are currently no safeguards for producers to prevent speculation on and misuse of prices for waste in a context where they bear the obligation to reach the proposed collection rate without any control on associated costs.
- Focusing all obligations on producers whereas other actors of the system have no obligation to comply with the directive stimulates a speculative market generating unjustifiably high collection costs for the producer – and thus for the EEE purchasers. This has already partly happened in the UK, where costs for accessing WEEE have considerably increased without any benefit to the environment or to the quality of service.
- It would create a somewhat artificial WEEE market based on the demand on producers to fulfil their obligations instead of on the objective net value of WEEE.
- In addition, the proposed approach of a collection rate on producers would generate unfair and unnecessary competition between producer collection schemes and reuse schemes, which usually do not pay to recover used equipment. This would be detrimental to both, reuse rates and to producers’ collection costs.
- A collection rate based on the amount of products put on the market in the previous years, is problematic. In almost every case products have a much longer lifetime than 1-2 years and therefore they do not come to recycling 2 years after sale. This is a problem especially in the case where markets are growing rapidly (e.g. mobile phones, compact fluo lamps) and a huge amount of products is put on the market in a market boom situation compared to the amount coming into the end of life phase, in particular at this time with the current economic situation. Annual sales also vary significantly due to market fluctuations and innovations. It is unlikely that a collection rate combining all these variations would make sense. Amounts of WEEE collected, ranges from less than 1 kg to more than 17 kg per year and inhabitant, depending on the particularities of member states, and also differ from product category to category, which underlines that the proposed rate as a “one target fits all” is unrealistic.

- Establishing a realistic collection rate would be extremely complex, requiring at least to take into account the average life time of a product and market growth per type of equipment.
- Finally, a collection rate that is calculated on the basis of sales volumes of new products not only disregards EEE market realities, but also risks leading to undesired environmental results: the proposed collection rate means that the less weight of new products a producer places on the market, the less amount of waste he would be required to collect. This would apply even if the previous appliances were heavier than the new ones (for example: shift from heavy CRT appliances to lighter LCD products).

Orgalime proposal:

- Stick with the current approach of Member States being responsible for reaching the collection target
- A new target, while challenging, but realistic can only be based on experience of WEEE collected in the previous years:
Therefore, stick with the current approach of an annual collection target per inhabitant and member state based on experiences of WEEE collected in the previous years in the respective member state
- Make it a legally binding obligation also on all other actors than manufacturers of EEE to report on the WEEE collected by them

IV. LEGAL BASE

The WEEE Directive has a twofold angle:

- The Directive includes provisions relating to the management of WEEE
- The Directive includes a number of product related provisions and obligations that have to be fulfilled before producers of electric and electronic appliances are allowed to place the product on the market (e.g.: marking, registration).

The legal base of art.175 of the EC Treaty of the Directive today, however, does not reflect this twofold angle, but is exclusively oriented on the waste management aspects of WEEE. In the transposition and implementation process this has caused significant problems for manufacturers, such as different products having to be registered or marked in different member states thereby creating unnecessary room for unfair competition and free riding.

We take the view that where waste policy constitutes product policy, legislative provisions should be built upon art.95 of the EC Treaty. This has also been recommended by the Commission's own WEEE review study report.

Orgalime proposal:

- Introduce a dual legal base of articles 95 and 175 of the EC Treaty, whereby provisions related to the scope, definitions, product requirements and producer responsibilities related to the putting on the market of new products should fall under the legal base of article 95 of the Treaty and provisions related to targets and waste treatment under article 175 of the EC Treaty.
Such an approach of a dual legal base was recently chosen when revising the existing batteries and accumulators directive.

V. REGISTRATION (article 16)

1. Better harmonisation of registration and reporting procedures and exchange of information between national registers

During the transposition process it became evident that the initial WEEE Directive missed the opportunity to introduce a formal mechanism fostering cooperation on common registration and reporting procedures between the different national registers. We welcome that the Commission's recast proposal addresses this issue and proposes to establish a format for registration and reporting in article 16.3.

However, better harmonised registration and reporting procedures, can only be effective if the scope of WEEE is fully harmonised in the EU, which is unfortunately not the case today nor with the recast proposal.

Also, proposals for such harmonised formats do already exist and could therefore be incorporated into the recast directive directly.

Finally, some national registers have already taken voluntary efforts in this direction and created an informal network, so called European WEEE Registers Network (EWRN).

A mechanism of cooperation between national registers should, in our view, be made obligatory in the WEEE Directive to help a better harmonised and more consistent approach of national registration and reporting procedures.

2. Assigning additional responsibilities to national registers

Orgalime is, however, against the proposal to assign further responsibilities to national registers. In particular, we do not support requiring registers to become inter-operational in order to transfer money, or to include information on producer activities in other member states than in their own country. This is for the following reason:

Registers are today installed in a way that producers can fulfil their registration and reporting obligations. **However, registers are not set up, or even able to, assign financial obligations.** The extent of costs a producer has to handle depends on the way he runs operations or on the contracts and conditions he has with his service providers. Proposing that registers should in the future be inter-operational to transfer money, as it is the case in article 16.2., unnecessarily upsets the current financing and registration structures in member states.

Furthermore, article 16.1 proposes that the register should serve for monitoring compliance with WEEE financing obligations. Article 16.4 stipulates that the register can be operated by collective responsibility schemes. This in our view creates a conflict of interests, which should be resolved: In our opinion, market surveillance and enforcement of legislation is, and should remain, a member states' competence.

Moreover, producer compliance schemes are commercial competitive organisations and, as such, will not always remain in business. Any leading scheme operating a national register would have access to information, including confidential information, which needs to be properly secured.

Orgalime proposal:

- Article 16.1-5 of the WEEE recast proposal should be modified as follows:
 - “ Registration, information and reporting**
 - 1. *Member States shall draw up a register of producers, including producers supplying electrical and electronic equipment by means of distance communication in accordance with paragraph 2.*
 - 2. *Member States shall ensure that any producer on their territory can enter in their national register all relevant information, including reporting requirements reflecting its activities. The registers shall be inter-operational to exchange information, including on quantities of electrical and electronic equipment placed on the national market and related to the intra-Community transfers of products or WEEE. National registers shall regularly meet in a Network Forum for the purpose of inter-operability, including the exchange of such information.*
 - 3. *National registers shall use the format included in annex XX for registration and reporting in their member state. Those measures designed to amend non-essential elements of this Directive by supplementing it, such as on the frequency of reporting, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in article 18(3).*
 - 4. *Deleted*
 - 5. *Deleted”*

VI. SCOPE**1. A truly harmonised scope as the basis for fair competition**

Given the product related elements in WEEE (e.g.: registration, marking), the scope of WEEE is one area that should be based on article 95 of the EC Treaty to avoid unfair competition and barriers to trade.

The proposed shift of the WEEE annexes to RoHS Directive cannot resolve the current negative implications on the EU internal market, since the use of Article 175 of the EC Treaty in WEEE would still allow for the possibility for individual member states to define their scopes differently in each member state and therefore continue the present negative internal market implications.

Orgalime understands that regulators wish to have the same scope to apply for both, the WEEE and the RoHS Directives and we generally share this motivation. However, we appeal to regulators not to regulate this in a way that would be detrimental to the functioning of the internal market for electrical and electronic equipment. We believe that legal certainty and a level playing field can only be secured by laying down the scope of WEEE in the WEEE directive without any cross reference to certain provisions in RoHS, and by laying down the scope of the RoHS Directive in the RoHS Directive without any cross reference to certain provisions of the WEEE Directive.

Harmonising the scope of WEEE requires in first place clear cut scope criteria that apply mandatorily in all member states without any possibility to derogate. Such criteria are provided in the Commission’s FAQ document of May 2005 (lastly updated: August 2006) on the WEEE Directive, which we generally support, and which should be properly reflected in the recast WEEE Directive, too.

Orgalime does not support the establishment of standalone product lists, as any list could never be complete or up to date and requires, as an indispensable prerequisite, formalised criteria. If such criteria are well defined, establishing a list would be unnecessary. Indicative examples given in guidance, however, can be helpful.

2. Clarifications for Business to Business (B2B) Equipment needed

• Industrial B2B equipment

Following the exemption in article 2.3 WEEE, the Commission has, in its guidance document (FAQs), also specified the criteria for the exclusion of certain industrial B2B equipment from the scope of WEEE. The Commission has particularly confirmed that equipment used in fixed installations would be out of the scope. Examples of fixed installations are installations in petrochemical, automobile manufacturing, pharmaceutical, material handling, power generation, water treatment, paper manufacturing plants or certain electrical installations.

The Commission's WEEE review preparatory study (carried out by UNU-EHS), also confirmed that little could be gained from an inclusion of industrial B2B equipment in the WEEE scope, considering the low environmental relevance of such appliances, the fact that they do not end up in the municipal waste stream and the fact that end of life treatment of such equipment is addressed in contracts between the affected business partners.

A general inclusion of industrial B2B equipment in the directive would also cause particular concerns in the light of the newly proposed collection rate: many industrial B2B products are used in applications, which are outside the scope of WEEE, for example incorporated in large-scale stationary industrial tools or other equipment which is outside the scope, part of fixed installations, etc. However, the manufacturer does not know the final application at the time that the product is put on the market, and he therefore does not know whether the product will be used in an included or excluded application. He must therefore mark all such products, and will also report all such products as being put on the market, even though many will not be collected because the final application is outside the scope.

• Dual Use B2B and B2C equipment

Article 2.4 of the WEEE recast proposal suggests classifying equipment as either WEEE from private household (B2C) or WEEE from users other than private households (B2B) through a comitology process. If the Orgalime proposals hereunder on the existing scope criteria were introduced, Orgalime would support article 2.4. Otherwise, Orgalime does not support this proposal. We agree that products designed and marketed for dual use should be assumed as being consumer products to avoid any misinterpretation and subsequent market distortion.

Orgalime proposal:

- Reject the Commission's proposal to delete annexes I.A and I.B from the WEEE Directive
- Re-introduce the reference to annex I.A of the WEEE Directive in article 3 (a) and add a new paragraph to clarify the term "dependent" according to the Commission's guidance document (FAQs):
*"Article 3(a): EEE means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields falling under the categories set out in annex 1.A of this Directive.
 Dependent shall mean that the equipment needs electricity as its primary energy to fulfil its basic function."*
- Reword article 2.1 WEEE as follows: *"This Directive shall apply to EEE falling under the categories set out in annex I.A. Annex I.B contains a binding list of products which fall under the categories set out in annex I.A."*
- Article 2.3b should be completed as follows: *"Equipment which is specifically designed as part of another type of equipment that does not fall in the scope of this Directive, such as part of a finished product outside the scope of the Directive or as part of a fixed installation, and can fulfil its function only if it is part of that equipment."*

- *The existing definition of “Fixed installations” as provided in article 2.c of Directive 2004/108/EC on Electromagnetic Compatibility should be introduced in a new article 3(t): ‘fixed installation’ shall mean fixed installation in the meaning of article 2(c) of Directive 2004/108/EC on electromagnetic compatibility.”*
- *One should add in article 2.4 a new sentence reading as follows: “Products designed and marketed for use by both, private households and users other than private households, should be assumed to represent consumer products.”*
- *One should focus scope on priority waste streams with main environmental impacts (as recommended by Commission study report)*
- *Provisions regarding the scope (i.e.: article 2, article 3.a and annexes I.A and I.B) should explicitly fall under a legal base of article 95*

VII. DEFINITIONS

The products covered by the WEEE Directive are also covered by New Approach type legislation, such as the Low Voltage Directive. For the purpose of better consistency and for facilitating compliance demonstration for producers and thereby reducing costs for industry and consumers alike, we generally support the Commission’s proposal to better align a number of definitions provided in the WEEE Directive with the definitions provided for such terms in the New Legislative Framework (Decision 768/2008/EC).

The definition of producer as proposed in article 3(j) of the WEEE recast proposal should also tie in to the extent possible with relevant definitions provided in Decision 768/2008/EC, while acknowledging the specific obligations that arise from the WEEE Directive, namely that registration as well as financing of collection and recovery are not characteristics of products (e.g. composition, ingredients, environmental impact), but additional obligations which have to be fulfilled at national level exclusively (i.e.: market surveillance and enforcement).

Therefore, in the case of WEEE, Member States need to be allowed to impose additional obligations on individual and legal persons who retail devices for the first time on member states level (as confirmed in a letter of Mr Mäkelä, Director DG Environment, 15 June 2005 in conjunction with a letter of Mr Prodi, President of Commission, 26 July 2004). Without the possibility to enact such obligations all collection structures and requirements for registration in Europe would only be executable on producers who are physically acting in the territory of a member state, but not on intra-European trading companies, thereby creating free riding and unfair competition.

Orgalime proposal:

- *Add the following new indent (iv) to article 3(j):
“(iv) an authorised representative of the producer, or the seller who makes the product available for the first time on a national territory ”*
- *Introduce the Commission’s clarification provided in the letter of Mr Prodi/Director Mäkelä in a new recital:
“(xx) For the practical implementation, it must be possible for Member States to impose national obligations to the natural or legal persons who are placing products onto their national markets for the first time from third countries as well as from countries inside the Community (intra-community trade). Therefore, Member States may put in place proportionate provisions that allow them to identify these persons and have the possibility to ask these persons to provide the registration and the financing of the management of WEEE arising from their sales.”*

VIII. PRODUCT DESIGN REQUIREMENTS (Article 4)

Orgalime and its European manufacturers of electrical and electronic equipment are fully committed to continuously improve the environment performance of products throughout their life cycle, including the use of substances and end of life aspects.

This is also why our industry is highly proactive in the ongoing implementation process of Directive 2005/32/EC on Eco Design of Energy Using Products. At this moment in time, implementation measures for some 30 different categories of energy using products are under preparation, which also look at the end of life phase.

In order to not disturb the ongoing implementation process of the Eco Design Directive, we feel that the WEEE Directive should not unnecessarily tread into the field of product design legislation. Our industry does indeed take into account end of life aspects when designing products, but for the sake of legal certainty and in order to avoid unforeseen impacts from an environmental perspective, believes that it is essential to consider end of life aspects in one horizontal piece of legislation as part of a complete life cycle perspective. For this purpose the EU institutions have enacted the Eco Design Directive.

Article 4 in our view could risk disturbing the Eco Design Directive through encouraging national or regional requirements, which are undermining the holistic approach of the Eco Design Directive, essentially through acting on a narrow range of criteria such as reuse, dismantling and recovery for an electrical and electronic appliance, rather than applying a scientifically based pre-selection of the environmental aspects, which would also consider aspects such as energy efficiency.

Orgalime proposal:

- Remove article 4 from the WEEE recast proposal

IX. ENFORCEMENT AND MINIMUM INSPECTION AND MONITORING REQUIREMENTS FOR MEMBER STATES (Article 20, new annexes I and II)

The Commission proposes to introduce extended requirements on inspection and monitoring of WEEE shipment as a means to combat illegal waste shipments. The intention of this proposal is valid.

However, the shipments that occur illegally today do not happen due to a lack of legislation, since in addition to the WEEE Directive an EU waste shipment regulation exists and has only recently been reinforced in a revision process; they happen due to a lack of strong and effective market surveillance and enforcement of such existing legislation.

Any newly introduced criteria would therefore have little impact on illegal shipments if market surveillance and enforcement are not improving in member states.

Secondly, a certain incentive for such shipments could also result from lower treatment standards applying for WEEE treatment in other regions of the world than the EU. If the EU wants to credibly fight illegal shipments, then it is important to motivate other regions of the world to adopt equally strong treatment requirements.

Orgalime proposal:

- Develop international WEEE treatment standards to ensure environmentally sound management of WEEE around the globe

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X. CONCLUSIONS

In conclusion, the solution for the occurring problem of illegal waste shipment and leakage is in our view less an issue of WEEE collection inside the EU (since collection does happen, though in many cases through unofficial channels that are unfortunately neither reported inside official WEEE channels nor handing in WEEE to them), but it is primarily an issue of

- weak enforcement of EU legislation in EU member states,
- non-consideration of the influence that actors other than producers involved in WEEE management are having in practice, and
- insufficient or non existing treatment standards in other regions of the world.

Orgalime feels that while the European Commission has learnt, from the limited experience gained from the application of the WEEE directive, the areas where improvements can be made, such as registration, many of the proposals are either premature, or not founded on objective evidence based on the impact assessments that the Commission has carried out.

Moreover, a number of the proposals, such as the financing of the collection and the requirement that manufacturers guarantee collection rates which member states are unable to achieve, show a lack of respect for the considerable investment that manufacturers have made in WEEE management schemes, for the concept of better regulation.

It is moreover particularly unfortunate that extra burdens, which provide no benefit to the environment, but result in raising costs for consumers and industry, should be proposed at this time, when the Commission should, rather than adopting a dogmatic approach, be focusing on economic recovery in an area where it can itself have real effect.

We very much hope that the European Parliament and Council will see fit to adopt a pragmatic approach and hope that, in this light, they will consider Orgalime's proposals for modifications of the WEEE recast proposal. We look forward to further contributing to the debate.



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